UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,781	07/20/2005	Walter Dorr	49090	9232

1609 7590 08/18/2009

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

EXAMINER	
LOPEZ, FRANK D	

ART UNIT	PAPER NUMBER
3745	

MAIL DATE	DELIVERY MODE
08/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Supplemental Examiner's Answer

The examiner's answer of July 7, 2009 erroneously indicated that the appeal was from the office action mailed November 7, 2009. The appeal was from the office action mailed July 11, 2008.

The reply brief filed July 14, 2009 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

Responsive to the Reply Brief under 37 CFR 41.41 filed on July 14, 2009, a supplemental Examiner's Answer is set forth below.

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

/KAREN M. YOUNG/

Director, Technology Center 3700

Before responding to the specific new issues, the examiner would like to address a question that underlies all of the new issues and the old issues. There appears to be a difference in opinion of who one of ordinary skill in the accumulator art is. The examiner contends that one of ordinary skill in the accumulator art would understand that the instant invention deals with accumulator pistons, and that there are many similarities between accumulator pistons and pistons that are part of actuators and pumps, and some differences. A similarity between accumulator pistons and actuator pistons includes that they move based on a difference in pressure across the piston. A difference includes the purpose of the movement: accumulator pistons move to absorb fluid from or supply fluid to the rest of the system, whereas actuator pistons move to move another element. One of ordinary skill in the accumulator art would recognize that, when a teaching is related to a similarity between accumulator pistons and actuator pistons, the teaching can be applied to the accumulator piston; whereas when the teaching is related to the difference, it can not be applied to the accumulator piston. It is also understood that the similarity or difference does not have to be explicitly discussed.

It is suggested that all the teachings in the 103 rejection are teachings related to similarities. The teaching of Schabuble et al was related to a magnetic position sensor, and since the accumulator piston of Peter has a magnetic position sensor, this teaching is related to similarities between the pistons and can be applied to the piston of Peter. Similarly, the teaching of Clark is related to fixing an element to the piston, which is implicitly related to a similarity on the accumulator piston of Peter, which is fixing the magnet on the piston, and therefore is also applicable.

I. Appellant argues that the grounds of rejection have been modified to now allege that the support member 6 of Peter is part of the piston 2 and that the tube member 5 is part of the housing, which forms part of the gas chamber (page 2 line 2-4). The examiner disagrees. In the final rejection of July 11, 2008, Peter was disclosed as having "a piston (**including** 6)…axially movable and dividing a cylindrical tube (1, 5) into a first gas space and a second hydraulic space" (page 2 line 13-15, emphasis added). Clearly, element 6 is indicated as part of the piston, which also includes another part (e.g. 2); and the housing includes the member 5. Therefore, the grounds of rejection has not been modified.

II. Appellant argues that the housing 1 and 5 of Peter does not form a cylindrical tube, since the housing is 2 cylinders of different diameters joined together (i.e. a stepped cylinder). Since a cylinder is defined as a surface traced by a straight line moving parallel to a fixed straight line and intersecting a fixed planer closed curve (a geometric definition, supplied by Appellant, page 2 line 11-12); a stepped cylinder can not be a cylinder. The examiner agrees that the cylindrical tube must have a shape of a hollow cylinder, but disagrees about what constitutes a cylinder. Although the first definition of cylinder, in Webster's New World Dictionary, Third College Edition, is what Appellant quotes, a second definition is "anything having the shape of a cylinder", and gives the example of the turning part of a revolver. Most cylinders of revolvers would not meet the first definition of cylinder, because they usually have blind grooves that go part way from the front toward the back. In the same way, the stepped cylinder of Peter does

not meet the first definition of cylinder, but would meet the second definition, since it has a cylinder shape. Since this is the broadest reasonable interpretation of "cylindrical tube", Peters meets this claim limitation.

III. Appellant argues that the claimed combination requires that the radially extending shoulder surface extend between the larger and smaller circumferential sections, with the larger and smaller circumferential sections facing axially the fluid and gas spaces, respectively. In this way **the shoulder must be axially between the fluid and gas spaces** (page 2 last line – page 34, emphasis added). Since the support member 6 of Peters does not separate the gas and fluid spaces, the support structure can not be relied on the meet the claimed limitations (page 3 line 6-9).

The examiner disagrees. There is no limitation that the shoulder must be axially between the fluid and gas spaces, or must separate these spaces. It would appear that Appellant is adding a limitation that the shoulder is adjacent the larger circumferential section, so that it also separates the gas and fluid spaces. The only limitation on the shoulder is that it be between the larger and smaller circumferential sections, which the piston (2, 6) of Peters has. It is understood that the piston of Peters has another intermediate circumferential section between the shoulder and the large circumferential section, but that is not precluded by the claim limitations. And therefore, the shoulder of Peters meets the claimed limitations.

IV. Appellant's argument about the combination of Clark and Peters, is not a new issue and appears to be adequately answered in the previous examiner's answer. Therefore, it will not be addressed here.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/F. Daniel Lopez/
Primary Examiner,
Art Unit 3745

Conferees:

/Edward K. Look/
Supervisory Patent Examiner, Art Unit 3745

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771